IN THE

Supreme Court of the United States

October Term, 1958.

No. 837.

CHARLES H. RUTHERFORD,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

MURRAY M. CHOTINER and
RUSSELL E. PARSONS,
202 South Hamilton Drive,
Beverly Hills, California,
Attorneys for Petitioner Charles H. Rutherford.

The Myers Legal Press, Los Angeles. Phone MA. 5-8820.

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Petitioner CHARLES H. RUTHERFORD submits herewith his Reply Brief to the Brief for the United States.

Petitioner relies on his Petition for Writ of Certiorari as the answer to the Government's Brief, and in addition thereto, submits the following:

The Government's Opposition Brief on page 11 states, "The Bill of Particulars furnished pursuant to his (petitioner) motion indicated numerous specific instances where he had accepted horse betting wagers either individually or as a principal through the agency of Cupp" . . . "and the evidence, although to a certain extent circumstantial, was sufficent to show petitioner's guilt as a principal."

It should be noted that the record is completely silent as to the petitioner or Cupp actually having accepted any

horse betting wagers set forth in the Bill of Particulars. The only thing that might be considered by the Government as supporting the contention that the items set forth in the Bill of Particulars were proven was the stipulation that Deputy Sheriff Carl Seltzer would testify that pieces of paper in the brown paper bag and under the cushion of the couch contained notations of purported bets on horse races and figures showing the totalization of wins and losses on the said purported bets. [Tr. of Rec., pp. 44-45.]

The mere fact that a witness would testify that in his opinion pieces of paper contained notations of purported bets does not show that there was an actual acceptance of the particular wagers set forth in the Bill of Particulars.

It is significant that the Government in its Brief did not answer the contentions of petitioner set forth in the Petition for Writ of Certiorari on page 15 to the effect that the Circuit Court in its Opinion erroneously concluded that there was a great mass of evidence of repeated transactions of appellant personally receiving from one or more persons at the North Burris apartment in Compton and that eyewitnesses saw him receive from runners or pick-up men sheets of paper of the kind used by bookmakers.

As pointed out in the Petition for Writ of Certiorari there is no evidence in the record that the petitioner received any transactions from anyone at the North Burris apartment. It was also pointed out in the Petition for Certiorari on page 15 that the record is silent that the persons who gave "rolled up packages of paper" were "runners or pick-up men". The record does not disclose an identification of the "rolled up packages of paper" handed to the petitioner at the auto park, insofar as the evidence introduced in the case in chief is concerned.

Conclusion.

For the reasons heretofore stated in the Petition for Writ of Certiorari and in this Reply Brief it is respectfully submitted that the Petition for Writ of Certiorari should be granted.

Dated: May 15, 1959.

Respectfully submitted,

MURRAY M. CHOTINER and
RUSSELL E. PARSONS,
By MURRAY M. CHOTINER,
Attorneys for Petitioner.

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